FILED
JUN 6 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 1245

SAMUEL OKIN,
Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

This brief is submitted by United Gas Corporation, Electric Power & Light Corporation and Electric Bond and Share Company in opposition to the petition of Samuel Okin for a writ of certiorari to review the order of the Circuit Court of Appeals for the Second Circuit of December 30, 1944 (p. 101), dismissing Okin's petition for review (pp. 1-54) of the order of the Securities and Exchange Commission (pp. 62-71) approving the plan of reorganization of United Gas Corporation under Section 11(e) of the Public Utility Holding Company Act of 1935.*

* For convenience, United Gas Corporation will be referred to herein as "United"; Electric Power & Light Corporation as "Electric"; Electric Bond and Share Company as "Bond and Share"; the Securities and Exchange Commission as "the Commission"; and the Public Utility Holding Company Act of 1935 as "the Act."

The Commission has also filed a brief in opposition to Okin's petition for a writ and in such brief has set forth a statement of most of the relevant facts, as well as statements regarding the opinions below, this Court's jurisdiction, the statute involved and the question presented. We shall not repeat such matters here, but for the purposes of this brief shall adopt the Commission's statements, adding only the facts set forth below.

Additional Facts.

United, Electric and Bond and Share are the parties who subscribed to and filed with the Commission the plan of reorganization constituting the subject matter of this appeal. They were the sole parties to the plan proceeding before the Commission, out of which this appeal grows. They are the persons having large direct financial interests in the plan and the proceedings involving it, and those interests are represented by many millions of dollars.

Yet Okin has proceeded, both in the Circuit Court of Appeals and in this Court, on the assumption that United, Electric and Bond and Share were entitled neither to notice of his appellate activities nor to be heard on his appeal. Okin did not serve on the companies or their counsel any copies of his petition for review in the Circuit Court of Appeals or any notice of the filing thereof. He has served on the companies and their counsel no notice of the filing of his petition for certiorari in this Court and no copy of the petition itself, his supporting brief or the record.

Moreover, Okin attempted to bring his present petition before this Court on a transcript of record which was not complete. In the Circuit Court of Appeals, after learning of the petition for review which Okin had filed there, the companies joined in the Commission's motion to dismiss

and filed an affidavit setting forth facts which were relevant both to the decision by that court and to the granting or withholding of a writ of certiorari here. This affidavit was omitted from the record brought to this Court.

It was only through the courtesy of the Solicitor for the Commission that the companies learned of Okin's present petition for a writ of certiorari, and it is only by putting themselves and this Court to the inconvenience attendant upon a petition for certiorari to correct diminution of the record that the companies will be able to complete the record upon which the decision of this Court regarding the granting or withholding of the writ must rest (see such petition and exhibit thereto, filed at the same time as this brief).

Argument.

For the purposes of this brief, the companies rely upon the arguments set forth in the brief which has been filed by the Commission in opposition to the present petition. In addition to such arguments for denial of the writ, the companies urge that the petition for a writ be dismissed, for the following reasons:

Okin has ignored the companies in connection with his petition for review in the Second Circuit on the theory that Section 24(a) of the Act justifies him in such conduct. The first two sentences of Section 24(a) contain the material upon which Okin predicates his argument:

> "Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in

such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered."

The fact that the foregoing statutory provision provides expressly for service upon the Commission is interpreted by Okin as permission to serve no one else—indeed, as meaning that no one other than the petitioner and the Commission are parties to the review proceedings.

At best, such an interpretation of Section 24(a) must be based upon a strained and barrenly technical argument. Such an argument should in no event influence the development of the law when the trend of the argument is toward a result as ridiculous and fruitful of injustice as in this case. Surely the courts should not go out of their way to insure a minority and indirectly interested security holder the right to appeal without notice or hearing being accorded to the persons whose interests are directly and vitally at stake in the appeal. That is what Okin is seeking.

The second sentence in the quotation above from Section 24(a) has a perfectly natural and understandable meaning. Without special provision the Commission would not be a party to an appeal from one of its orders any more than a lower court is a party to an appeal from one of its decrees or orders. Because of the special nature of the administrative proceedings under the Act, it was undoubtedly felt that the Commission should be made a party to appeals from its orders under the Act and should be permitted to be heard in justification of such orders.

Accordingly, the necessary special provision was made for rendering the Commission a respondent in all review proceedings under Section 24(a). That is the purpose of the second sentence of Section 24(a) quoted above.

But this is far from saying that the parties to the Commission proceedings out of which the appeal arises, the persons whose financial interests are vitally at stake, the persons who will be expected to take action affecting the rights of many security holders and involving millions of dollars, are not parties to the appeal, and are to have neither notice thereof nor a right to be heard therein. We submit that Congress assumed such persons to be parties to appeals under Section 24(a) and certainly evidenced no intention of excluding them simply by stating affirmatively that the Commission should be a party.

If we are correct in our interpretation of Section 24(a), the companies were parties to the appeal in the Circuit Court of Appeals and Okin's proceeding in this Court is doubly at fault, for he has also ignored the requirements of paragraph 3 of Rule XXXVIII of this Court's General Rules by failing to serve upon the companies as respondents notice of the filing of the present petition, together with copies of the petition, printed record and his supporting brief.

The argument which we here urge is no mere technicality. The plan of reorganization of United, which Okin calls into question and over which Okin asks this Court to sit in judgment, resulted in changing United from a corporation having three classes of stock aggregating over $141,000,000 and various debt securities aggregating over $50,000,000 into a corporation with a single class of common stock of $106,533,000 and a single class of long-term debt in the amount of $100,000,000. This petition for review, which ignores the issuer and the owners of these

securities, who were the sole parties to the plan proceedings before the Commission, cannot be deemed properly filed in this Court and indeed must be considered as little short of frivolous.

Conclusion.

We respectfully urge that the petition of Samuel Okin for a writ of certiorari herein be dismissed, or in the alternative that it be denied.

June 4, 1945.

Respectfully submitted,

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Respondent.

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